

### **REMARKS**

Claims 20, 21 and 23-30 have been canceled without disclaiming its subject matter, and claims 31 through 45 have been added by this amendment.

#### **Status Of Pending Claims**

Claims 20, 21 and 23 through 30 have been cancelled while claims 31 through 45 are newly presented.

#### **Rejection Of Claims Under 35 U.S.C. §103(a)**

The rejection of claims 20, 21, 23 through 26, 29 and 30 under 35 U.S.C. §103(a) over a proposed combination of Berglof *et al.* '653 and Davison '328 is rendered moot by the foregoing cancellations.

Applicant notes that newly presented claims 31 through 45, unlike the Examiner's proposed combination, define a structure with, *inter alia*,

“a pair of wall members of unequal length ***aligned and joined together*** at a throat to form an integral monolithic structure ... .”

In contradistinction, the Examiner's proposed combination is stated by the Examiner to teach,

“a pair of wall members 18a and 19a) of unequal length Col., 3, lines 10-13) ***aligned*** (Col. 3, lines 20-23) at a throat ... .”<sup>1</sup>

What is missing from the Examiner's proposed combination is any teaching or suggestion of the structural simplicity which is advantageously provided by Applicants' claims, of ***joining*** these wall members at a throat. The Johnson '777 reference does not remedy these deficiencies. Instead, the

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<sup>1</sup> Paper 20041004, page 4.

Examiner has ignored the mandate of 35 U.S.C. §103(a) to consider each claim “in its entirety”, and completely ignored Applicant’s “pair of wall members of unequal length *aligned and joined together* at a throat.” Consequently, the final Office action is incomplete, and fails to conform with the standard of completeness set forth by 37 CFR §1.104(a), (b) and (c). Clarification in subsequent Office correspondence is respectfully requested.

Paper No. 20041004 inaccurately asserts that the Examiner’s proposed combination teaches,

“a pair of wall member (18A and 19A) of unequal length ... and a continuous plastic cover (C) disposed along the interior surface to form a continuous layer extending from a first terminal end (A), around the throat, to a second terminal end while covering and separating the magnet members.”<sup>2</sup>

A through reading for the applied art fails to reveal any teaching of either a pair of wall member (18A and 19A) of unequal length, or any wall member 18A, wall member 19A, or “continuous plastic cover (C).” The Examiner’s proposed combination does not even use the reference symbols “18A”, “19A” or “C.” Moreover, a through reading of the Examiner’s proposed combination fails to reveal any “a pair of wall member (18A and 19A) of unequal length” which is distinct from “a continuous plastic cover (C).” It appears therefore, that the final Office action is incomplete, and fails to conform with the standard of accuracy, thoroughness and completeness set forth by 37 CFR §1.104(a), (b) and (c). Clarification in subsequent Office correspondence is respectfully requested.

In the Examiner’s proposed combination, the Examiner relies upon Davison ‘328 to modify the primary reference, but fails to explain how this modification could be accomplished without the critical score 11; moreover, incorporation of score 11 into the primary reference will impermissibly prevent the primary reference from being operated in its intended mode of operation with “the limbs

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<sup>2</sup> Examiner’s Comments, Paper No. 20041004, pages 4 and 5.

18 and 19 ... folded together about the central bend 13A to place the magnetic attraction members 11 and 12 *in the aligned position* shown in FIG. 2 ... .” In the Examiner’s proposed combination including “score 12” this occurrence of *the aligned position* can occur only when the combination is extending vertically downwardly, with “score 12” being physically above both of the magnets; all other orientations fail to attain this occurrence of *the aligned position*, as required by the primary reference. Accordingly, there is no *prima facie* showing of obviousness, and this rejection may not be maintained.

The primary reference already shows a sheath 13; there is no evidence of motivation in the record before the Examiner to justify the addition of “a separate continuous interior cover member ... “ from Davison ‘328 into the primary reference. The absence of the requisite motivation prevents this rejection from being maintained. Moreover, the gratuitous incorporation of unnecessary structural components into the primary reference is evidence of an impermissible hindsight reconstruction of the art in the light provided by Applicant’s claims alone. Withdrawal of this rejection is required.

In view of the advantageous simplicity of manufacture and ease of use flowing from these distinctions, newly presented claims 31 through 45 are patentably distinguishable, and allowable over the prior art. Such action is respectfully requested.

**Fees Incurred**

No fees are incurred by this Amendment.

**Conclusion**

In view of the above, all claims are submitted to be allowable and this application is believed to be in condition to be passed to issue. Reconsideration of the rejections is requested. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

Respectfully submitted,



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